Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Modernization of Media	)	MB Docket No. 17-105
Regulation Initiative	)	

REPLY COMMENTS OF THE ABC TELEVISION AFFILIATES ASSOCIATION, CBS TELEVISION NETWORK AFFILIATES ASSOCIATION, AND FBC TELEVISION AFFILIATES ASSOCIATION

Mark J. Prak
Stephen Hartzell
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
Wells Fargo Capitol Center, Suite 1700
150 Fayetteville Street
Raleigh, N.C. 27601
Telephone: (919) 839-0300

Counsel for the ABC Television Affiliates Association

John Feore
Jason Rademacher
COOLEY LLP
1299 Pennsylvania Avenue, N.W.
Suite 700
Washington, D.C. 20004
Telephone: (202) 842-7800

Counsel for the CBS Television Network Affiliates Association and the FBC Television Affiliates Association

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Summary

The Affiliates Associations support the Commission's examination, elimination and/or modification of several regulatory requirements, particularly those that result in unnecessary record keeping burdens on local television stations with little countervailing benefit. While a number of regulations neatly fit into the Commission's intended "clearing of the regulatory underbrush" theme, the network representation rule is one that should not be re-examined at this time. More specifically, the Affiliates Associations favor a more streamlined approach to the rules governing the reporting of (i) certain EEO matters, (ii) DTV ancillary and supplementary service offerings, (iii) certain programming matters, (iv) station ownership, (v) certain contracts and agreements, and (vi) must carry/retransmission consent elections.

In addition, the Affiliates Associations value the certainty and predictability of the three-hour-per-week "Category A" children's E/I programming compliance option. In light of the unfavorable result of a 2016 renewal case involving a station that aired four hours per week of children's E/I programming—two hours of which aired during core programming hours, and two hours of which aired in a time slot immediately adjacent to core programming hours—the Commission should provide guidance about the "Category B" children's E/I programming compliance option for stations that wish to rely on it. Moreover, given the increase in weekend local news and live coverage of popular sporting events, the Commission should provide television stations with greater flexibility for compliance with their children's E/I programming obligations, including the elimination or modification of the "second home" policy for rescheduled preemptions and expanding the hours in which "core" E/I programming may be aired.

Finally, the Affiliates Associations believe that revision of the Commission's ownership attribution rules would facilitate investment in local broadcast stations.

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JOINT REPLY COMMENTS OF THE
ABC TELEVISION AFFILIATES ASSOCIATION,
CBS TELEVISION NETWORK AFFILIATES ASSOCIATION,
AND FBC TELEVISION AFFILIATES ASSOCIATION

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association (collectively, the "Affiliates Associations") submit these reply comments in support of the Comments of the National Association of Broadcasters ("NAB") and other commenters proposing the elimination of certain outdated and burdensome regulations governing local broadcast television stations.[1]

I. INTRODUCTION

Each of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with its respective broadcast television network. Collectively, the Affiliates Associations represent over 500 local television stations in markets of all sizes across the country. These local network-affiliated stations form the backbone of the American television broadcasting system, providing thousands of hours of local news, weather, emergency, entertainment, and information

[1] *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (rel. May 18, 2017) (the "Public Notice"); Comments of the National Association of Broadcasters, MB Docket No. 17-105, filed July 5, 2017 ("NAB Comments").

programming every week. Together, these local television stations invest millions of dollars every year in their communities to support their broadcasting operations.

Members of the Affiliates Associations also continue to labor under decades-old record-keeping and reporting requirements that are otherwise unheard of in the media industry. The FCC adopted many of these regulations at a time when television stations—particularly local network affiliates were the sole providers of video programming. While still critical to the lifeblood of local communities, the dominance of local television over the media landscape has diminished somewhat with the concomitant rise of cable, satellite, and Internet video programming offerings. Yet these record-keeping regulations persist and continue to cause broadcasters to dedicate many hours of staff resources to regulatory compliance rather than fulfilling their mission of serving the public interest.

The Affiliates Associations commend the FCC for recognizing that the media landscape has changed in ways that make the removal and/or relaxation of certain outdated, unnecessary, and cumbersome regulations on local television stations the appropriate response to these changes. Indeed, as described below, the Affiliates Associations strongly urge the FCC to proceed to relax or repeal certain broadcast television regulations identified in the NAB Comments. At the same time, it is also important for the Commission to understand that the relative balance of power and increasingly complex relationship between national networks—especially the Big Four networks—and their Affiliates counsel that the Commission abstain, in the course of this proceeding, from considering changes to the Network Representation Rule.

II. The FCC Should Refrain From Considering Changes to the Network Representation Rule.

First, the Affiliates Associations wish to address the Network Representation Rule[2]—which currently prohibits each major television broadcast network from acting as the advertising sales representative for their respective affiliates in the sale of spot advertising—because one commenter has invited the FCC to consider changes to it.[3] This proceeding is simply not an appropriate venue in which to revisit this long-standing rule. The Network Representation Rule is a key component of a set of regulations that historically has sought to balance the complex relationship between local television stations and their affiliated national networks.[4] Rather than adding intricate and far-ranging behavioral issues to this proceeding, the FCC should focus on eliminating, modifying, and/or modernizing outdated and superfluous rules imposing paperwork or other burdens such as those identified by NAB.

As the FCC's 1995 proceeding examining the network representation rule demonstrated, historically there have been stark differences of opinion about the ongoing need for the network representation rule.[5] The record in that proceeding demonstrated broad disagreement regarding whether elimination of the rule would undermine affiliates' economic independence or harm

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[2] 47 C.F.R. § 73.258.

[3] *See* Comments of CBS Corporation, The Walt Disney Company, 21st Century FOX, Inc. and Univision Communications Inc., MB Docket No. 17-105 (filed July 5, 2017), at 9-10. *See also* 47 C.F.R. § 73.658(i). Notably, the NBC Television network did not join the CBS, Disney, Fox and Univision request. That decision explains the absence of the NBC Television Affiliates from this pleading.

[4] *See* 47 C.F.R. § 73.658(a)-(m).

[5] *See Review of the Commission's Regulations Governing broadcast Television Advertising*, Notice of Proposed Rulemaking, 10 FCC Rcd 11853 (1995). *Compare*, *e.g.*, Comments of the Broadcaster Coalition, MM Docket No. 95-90, filed Aug. 28, 1995, *with* Comments of Capital Cities/ABC, Inc., MM Docket No. 95-90, filed Aug. 28, 1995.

competition in television advertising markets.[6] Following this robust debate, the FCC chose in 2011 to terminate its rulemaking and to refrain from acting on proposals to revise or eliminate the Network Representation Rule.[7] No changes in the network/affiliate relationship or the national advertising market would make these issues any less contentious or complex today than they were twenty years ago. To the contrary, the evolution of elements of the network/affiliate relationship—including (i) network demands for greatly increased license fees from local affiliates, (ii) multiple, new network programming distribution options (including over-the-top arrangements), (iii) porting of network affiliations from existing affiliates to different stations in some markets, and (iv) the Commission's recent focus on the continued viability of program exclusivity rules (and the decision to retain them)—demonstrates that competitive issues undergirding the Network Representation Rule are not appropriate for the instant proceeding.[8] The network ad sales representation prohibition remains an important structural barrier to networks using economic leverage to eliminate competition from Affiliates in the national spot market. To eliminate it would be to undercut one of the economic pillars of localism.

Instead, the instant proceeding should be dedicated to removing "regulatory underbrush" that uniquely burdens local broadcast stations within the media ecosystem, and especially hinders local television stations from competing with the multitude of competitors they now face in a

[6] *See*, *e.g.*, Comments of Hubbard Broadcasting, Inc., MM Docket No. 95-90, filed Aug. 28, 1995 (arguing that elimination of rule would undermine affiliate independence and harm competition in advertising markets); Reply Comments of CBS, Inc., MM Docket No. 95-90, filed Aug. 28, 1995 (disputing same).

[7] *See Termination of Certain Proceedings as Dormant*, Order, 25 FCC Rcd 15312, 15350 (2011).

[8] Moreover, revisiting this rule is unnecessary, because the FCC has been willing to grant waivers of Section 73.658(i) where appropriate. *See*, *e.g.*, *Fox Networks Group, Inc., Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Order, 27 FCC Rcd 5158 (2012).

tremendously challenging video marketplace. It would be a mistake to lose focus on that important goal by getting bogged down in far-reaching discussions of the network/affiliate relationship and the continued efficacy of the Network Representation Rule. The Affiliates Associations therefore respectfully urge the FCC to decline the suggestion made by some networks.

III. The FCC Should Proceed with NAB's Proposals to Streamline and Reduce Unnecessary Regulation of Local Television Stations.

A. The FCC Should Modernize, Modify, and/or Eliminate Certain Reporting, Filing, and Notice Requirements.

The Affiliates Associations strongly support NAB's call for the modernization, streamlining, or elimination of several of the FCC's periodic filing and public notice requirements applicable to television broadcasters.[9] Every year, television stations spend countless hours preparing and filing paperwork, including, ownership reports (post-consummation and/or biennial),[10] quarterly Issues/Programs Lists,[11] children's programming reports and commercialization materials,[12] EEO midterm reports,[13] DTV ancillary/supplementary services reports,[14] and certain FCC-designated contracts.[15] Due diligence for and preparation, review, and maintenance of these various materials and reports diverts station resources from better serving viewers and provides the public with little discernible benefit. Each of these marginally useful requirements should be eliminated or modernized and modified as described below. In addition, the FCC's rules require broadcasters to use anachronistic methods (such as postal mailings and

[9] *See* NAB Comments at 5-23.

[10] *See* 47 C.F.R. § 73.3615.

[11] *See* 47 C.F.R. § 73.3526(e)(11)(i).

[12] *See* 47 C.F.R. § 73.3526(e)(11)(i),(ii).

[13] *See* 47 C.F.R. § 73.2080(f)(2).

[14] *See* 47 C.F.R. § 73.624(g).

[15] *See* 47 C.F.R. § 73.3613.

newspaper publication) to inform stakeholders, including the public and other industry members, of certain station developments including assignment/transfer of control applications and retransmission consent elections. The Affiliates Associations urge the Commission to give stations the option to replace these 20th Century protocols with more accessible and more efficient 21st Century, Internet-based notifications.

First, as noted above, certain reporting obligations divert television station resources away from the core mission of community service to the preparation and maintenance of time-consuming paperwork. In each case, more efficient and more viewer-friendly options exist to ensure that television stations disclose information to the public and to the FCC without unduly burdening station resources. To that end, the FCC should explore and adopt the following alternatives suggested by NAB:

- ***Ownership Reporting***. The Affiliates Associations support replacement of the current biennial and post-consummation ownership reporting requirements with NAB's proposal that ownership reports be filed in more limited circumstances.[16] The Affiliates Associations urge the Commission to require the filing of ownership reports only upon initial licensing and following assignment or transfer of control of a station's license. These filings, together with a renewal certification that a station's ownership information on file is correct, will ensure that the FCC's records remain up to date without burdening stations with needless periodic filings. And, if a station's ownership information has changed since the most recently-filed ownership report, the station would be required to file an updated ownership report during a 60-day window that opens on the date the station's license renewal application is due, with an "as of" date of the license renewal deadline.

- ***Quarterly Issues/Programs Lists***. The requirement of preparing detailed reports of issues of community concern and programming responsive to those issues is a relic of a bygone era. Today, local television stations, collectively and individually, likely produce and air more local news and informational programming than at any time in their history. This is not to satisfy a regulatory reporting requirement; it is to serve the needs and demands of viewers in a hyper-competitive media marketplace, in which local television stations offer local news, information, and other programming that outpaces the offerings of other media. The Affiliates Associations support NAB's proposal to replace the quarterly compilation of Issues/Programs Lists with an annual certification of compliance with the FCC's rules

[16] *See* NAB Comments at 16-17.

requiring service to local communities.[17] Such an approach would be consistent with other television station compliance procedures, including the current certifications processes for compliance with the rules governing, among others, (i) RF radiation exposure (currently a renewal certification requirement[18]), (ii) non-discrimination in sales agreements (currently a renewal certification requirement[19]) and (iii) main studio rule location (currently a construction permit application certification requirement[20]). Such a certification process, combined with the readily-available programming schedules that are available from multiple websites,[21] would ensure that viewers have access to information they need about stations' local service without continuing to impose the unnecessary burden on stations that the current filing requirements represent. And, stations would, of necessity, need to maintain whatever records are necessary, in their business judgment, to respond to any bona fide allegations of service failure at license renewal time.

- ***Quarterly Children's Programming Reports***. The Affiliates Associations support the goals of the Children's Television Act of 1990 ("CTA") and recognize the importance of ensuring quality programming aimed at the nation's youth. Nonetheless, the Affiliates Associations believe that the FCC's frequently periodic reporting and filing requirements do little to advance that goal. Completion of the time-consuming "Form 398" electronic paperwork—which has proven to continue to be "buggy" and "glitchy" in the Media Bureau's current LMS filing platform—to demonstrate compliance with "core" E/I programming standards consumes valuable station resources without any empirical evidence that such reports are regularly or ever used by parents to ascertain the content, amount, benefits, or quality of the programming that is the subject of the reports. Moreover, after filing 32 children's programming reports during each license term, each television station must then re-certify nearly all of the same information in the FCC's Form 303-S renewal application,[22] which necessitates each station's re-review of the reports

[17] *See* NAB Comments at 6-9.

[18] *See* FCC Form 303-S, Section III, Item 7 ("Licensee certifies that the specified facility complies with the maximum permissible radio frequency electromagnetic exposure limits for controlled and uncontrolled environments.").

[19] *See* FCC Form 303-S, Section II, Item 7 ("Commercial licensee certifies that its advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses.").

[20] *See, e.g.*, FCC Form 2100, Schedule A (requiring certification "The proposed facility complies with the applicable engineering standards and assignment requirements of 47 C.F.R. Sections . . . 73.1125.").

[21] In addition to programming schedules available on most television station websites, programming information is also readily available for free to Internet users who visit tvlistings.zap2it.com or www.ontvtonight.com or simply google the call sign of their favorite station together with the term "program schedule."

[22] *Compare* FCC Form 303-S, Section IV, Item 6 (certification that children's programming reports have been filed and incorporating such reports into the renewal application by reference), Item 7 (certification of weekly average of "core" children's programming), Item 8

previously filed; this duplicative re-certification process is the very definition of superfluous regulatory paperwork. The FCC should consider how best to streamline the reporting requirements[23] for children's E/I programming, starting with the NAB's proposal of an annual report/certification requirement in lieu of the current quarterly reporting obligations.[24]

- ***Quarterly Records of Compliance with Children's Commercial Time Limits***. The Affiliates Associations support the goal of the CTA to limit the exposure of pre-teens to commercial material. While the current recordkeeping and disclosure requirements with respect to commercialization of programming that targets children under 13 are less burdensome than the children's E/I reporting requirements—stations have discretion as to the nature of the records they compile, review, upload, and maintain to support their license renewal certification of compliance[25]—further streamlining of the process is possible. To that end, the Affiliates Associations support NAB's proposal to adopt an annual report/certification requirement in lieu of the current quarterly reporting obligations.[26]

(certification of on-air identification of programs as E/I), Item 9 (certification of compliance with requirement to notify publishers of listing guides with certain information about children's E/I programs), Item 10 (certification of compliance with requirement to publicize existence and location of children's quarterly reports), Item 11 (optional opportunity to describe additional children's programming efforts including non-core children's programming and non-broadcast efforts to enhance the E/I value of children's programming) *with* FCC Form 398 "Digital Core Programming" section (questions soliciting average number of core programming hours and representation of compliance with requirement to notify publishers of listing guides with certain information about children's E/I programs), "Liaison Contact" section (questions seeking representations of compliance with requirement to publicize existence and location of children's quarterly reports and optional opportunity to describe additional children's programming efforts including non-core children's programming and non-broadcast efforts to enhance the E/I value of children's programming); "Digital Core Programming Summary" section (question seeking representation for each program whether it was identified as "E/I").

[23] In addition, the Commission's children's programming report currently requires filers to erroneously certify that they understand that "Upon grant of this application, the Authorization Holder may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in automatic cancellation of the Authorization. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of Authorization requested in this application." Television stations should not be required to make such an inapplicable certification in a children's television programming report.

[24] *See* NAB Comments at 10-14.

[25] *See* 47 C.F.R. § 73.3526(e)(11)(ii) (allowing stations discretion to select the nature of records for quarterly upload to public files necessary to support renewal certification of compliance with the children's commercial time limits).

[26] *See* NAB Comments at 10-14.

- ***EEO Midterm Reports***. The Affiliates Associations support NAB's call for the elimination of EEO midterm reporting requirements on FCC Form 397.[27] The content of these reports entirely duplicates information contained in stations' annual public file reports—which are required to be posted both in station online public files and on station websites—which means the midterm report can be eliminated without any change in transparency relating to station recruitment and outreach practices governed by Section 73.2080 of the Commission's rules.[28] This is precisely the type of streamlining that this proceeding should be dedicated to achieving.

- ***DTV Ancillary Services Filings***. Section 73.624(g) of the Commission's rules[29] requires *every* digital television station (commercial and noncommercial alike)—i.e., full power, Class A, low power, and TV translator stations—annually to file a Form 2100, Schedule G (formerly known as FCC Form 317[30]) to report whether or not the station engaged in any digital ancillary and/or supplementary services (and to remit a fee if applicable). Because only a small fraction of television stations actually offer DTV ancillary or supplementary services, filing these annual reports requires the expenditure of resources for nearly every television station in the country with no countervailing benefit to the Commission or public.[31] The Affiliates Associations join NAB in calling for a common sense reform of

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[27] *See* NAB Comments at 18-19. Multiple other commenters in this proceeding support the elimination of the EEO mid-term reporting requirement. *See, e.g.*, Comments of Nexstar Broadcasting, Inc., MB Docket No. 17-105 (filed July 5, 2017), at 13-14; Comments of America's Public Television Stations, et al., MB Docket No. 17-105 (filed July 5, 2017), at 12; Comments of Alpha Media, LLC, et al., MB Docket No. 17-105 (filed July 5, 2017), at 3.

[28] *See* 47 C.F.R. § 73.2080.

[29] 47 C.F.R. § 73.624(g).

[30] *See Annual DTV Ancillary/Supplementary Use Services Report for Digital Television Stations (Form 2100 – Schedule G) Due December 1, 2016*, Public Notice, 31 FCC Rcd 12474 (2016).

[31] Until 2015, each station's Ancillary/Supplementary Services report had to be filed individually. Only in 2015—after more than a decade of required annual filings—did the Media Bureau adjust the report and its filing system to allow certain commonly-owned stations to be filed together on one report. *See Annual DTV Ancillary/Supplementary Use Services Report for Digital Television Stations (Form 2100 – Schedule G) Due December 1, 2015*, Public Notice, 30 FCC Rcd 12358 (2015) (announcing, for the first time: "Note: Licensees with multiple commonly-owned stations may now submit a single Form 2100 – Schedule G for all stations provided that none of the stations have any revenues to report. Stations with revenues from ancillary or supplementary services must submit a separate Form."). While the multi-station reporting option has reduced *some* of the burden associated with the annual filing, it is only available to stations *licensed to the same entity*. Thus, if a group owner uses a separate entity for each station licensee, the multi-station reporting option is unavailable and results in no reduction in burden. And, the multi-station reporting option is not available to licensees that provided ancillary or supplementary services during the reporting period. With respect, that does not make good sense.

this requirement so that only stations actually offering feeable ancillary or supplementary services must file.[32]

- ***Paper Filing of Miscellaneous Contracts***. Section 73.3613 of the FCC's rules requires TV stations to file paper copies of numerous TV station contracts with the FCC. As NAB astutely observes, this requirement is duplicative of other reporting and record-keeping requirements, and the filed paper copies themselves generally gather dust at the FCC.[33] With the advent of the online public file requirements, these obligations can be safely eliminated with little—if any—loss in transparency.

Elimination or reduction of these reporting and filing requirements—which are burdensome on an individual basis and even more so on an aggregate basis—will save innumerable hours of station staff time, freeing station personnel to concentrate on their mission of serving local audiences. The Affiliates Associations respectfully urge the FCC to consider repeal or reform of these rules.

Second, the Affiliates Associations support NAB's request that the FCC modernize its rules governing certain notices broadcasters are required to provide to the public and other industry stakeholders.[34] In particular, the Affiliates Associations strongly support elimination of the *requirement* (making it, instead, permissive) that broadcasters identify local cable systems and satellite providers that provide service in their market and send each operator a separate retransmission consent/must carry election statement via certified U.S. Mail. This requirement burdens television stations because there is no central repository for the information necessary to (i) identify local cable systems and satellite providers and (ii) identify current, viable mailing addresses for those operators. Stations expend significant resources every three years identifying which cable systems serve their DMAs and which communities those cable systems serve. And, in the end, there is no way for a station to know with certainty if they have found and reached out

[32] *See* NAB Comments at 19.

[33] *See* NAB Comments at 17-18.

[34] *See* NAB Comments at 20-23.

to every operator. A simpler, fairer way to apportion the burden of publicizing a station's carriage election would be to give each station the *option* of providing notice on the station's website through a conspicuous link to election notices (and require each cable operator and satellite provider to check station websites for election notices) or to continue to send individual election notices via certified U.S. Mail. This common-sense reform would eliminate significant work for television stations and remove all confusion and uncertainty from the process.

B. The Affiliates Associations Support a Close Examination of Certain of the Children's E/I Programming Requirements.

The FCC promised more than a decade ago to reexamine certain children's programming obligations of television stations following the DTV transition, opining that "technological developments" would give the Commission reason to reconsider how the children's E/I programming rubric fits into the world of multicasting digital television stations.[35] That review has, to date, not occurred, and for reasons described in detail by NAB, it is both long overdue and necessary to address dramatic changes in the television marketplace.[36] As a result, the Affiliates Associations agree that the time is ripe for the Commission to closely examine appropriate ways in which television stations may more flexibly serve the E/I programming needs of children ages 16 and under, especially in light of the evolution of viewer habits and expectations.

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[35] *See Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004), ¶¶ 66-67 ("2004 Order"), *reconsidered and modified in part by Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) ("2006 Order").

[36] *See* NAB Comments at 24-36.

1. The Commission Should Continue to Permit Stations to Meet Their CTA Obligations with a Simple, "Category A" Three-Hour E/I Option

As pointed out by NAB, television stations, for more than a decade, have routinely relied on "Category A" compliance—whereby stations air an average of three hours per week, per full-time program stream, of "core" children's E/I programming[37]—to meet their CTA children's E/I programming obligation. For stations that meet the "Category A" requirements, Media Bureau staff approve, pursuant to delegated authority, the children's E/I programming performance of television stations at license renewal time.[38] Of course, the benefit to the "Category A" method of compliance is that it is measurable and predictable; stations should know with a fair degree of certainty whether they will meet the three-hour guideline in any calendar quarter and over any six-month period and how to plan ahead to maximize the likelihood of compliance (subject to the station's capacity to reschedule preempted episodes of "core" programming, as discussed further below).[39] Category A remains a stalwart and beneficial tool for stations to use to ensure smooth sailing under the CTA at license renewal time, and it should be retained as an option for all

[37] *See* 47 C.F.R. § 73.671(d)-(e).

[38] *See* 47 C.F.R. § 73.671(d)-(e); *see also Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996) ("1996 Order"), ¶¶ 120-134.

[39] *Accord* 1996 Order, ¶ 130 ("We consequently believe a safe harbor processing guideline will serve the public interest by providing a reasonable degree of certainty while also preserving a reasonable degree of flexibility for broadcasters.").

television stations.[40] Category A is not, however, the only compliance approach recognized by the Commission or desired by local television stations.

2. In Light of the Uncertainty Created By the WRFB Renewal Case, the Commission Must Unambiguously Reaffirm the Viability of "Category B" Compliance

The Commission's children's programming rules allow stations that fail to meet Category A's three-hour standard (for whatever reason and on whichever program stream) to "rely on a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming."[41] This "second line of defense" is "Category B" compliance. Despite the greater flexibility that would seem to inhere in the Category B approach, the Affiliates Associations are not aware of any member stations that deliberately rely on the greater flexibility represented by the Category B compliance option, which was originally established in 1996[42] and reinforced a decade later in the 2005 Order.[43] Indeed, the very viability of Category B was put

[40] In addition, in light of the decline in "appointment viewing" (and increase in the ability of viewers to access children's E/I programming via time-shifting technology), the Affiliates Associations favor the Commission's consideration of an expansion of core programming hours, so that stations may schedule children's E/I programming as early as 4 a.m., provided stations adequately publicize the programming schedule.

[41] 47 C.F.R. § 73.671(e)(1).

[42] *See* 1996 Order, ¶¶ 133-134.

[43] *See* 2005 Order, ¶ 21 & n.53.

into serious question in 2016 with the adoption and release by the full Commission of the Order and Consent Decree in the WRFB renewal case.[44]

In the WRFB Order, the licensee disclosed a core programming shortfall in its license renewal application.[45] Following an inquiry from Media Bureau staff, the licensee disclosed that it regularly aired *four hours* of children's E/I programming per week and that, for a period of approximately two years, half of the children's weekly E/I programming aired from 6 – 7 a.m. on Saturdays and Sundays, *immediately adjacent to the other half of the station's children's weekly E/I programming*.[46] The station ultimately settled the matter with the Commission, paid a fine of $14,500, *admitted that it violated the children's E/I programming rules*, agreed to implement a compliance plan to address, inter alia, children's E/I programming, and consented to a short-term renewal period.[47]

From a children's programming standpoint, the WRFB Order quite clearly stands for the proposition that the airing of *four hours* per week of children's E/I programming—two hours of which meet the definition of core programming and the other two of which would meet the definition of core programming except that they air in a time slot that is immediately adjacent to core programming hours—is not sufficient to satisfy Category B under the children's E/I programming rule and the CTA. These four hours per week of children's E/I programming—for a period of two years of an eight-year renewal period—was apparently so vastly different from

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[44] *R&F Broadcasting, Inc., Licensee of Station WRFB(TV), Carolina, Puerto Rico*, Order and Consent Decree, 31 FCC Rcd 7445 (2016) ("WRFB Order").

[45] *See* File No. BRCDT-20121001AGN, Exh. 24.

[46] *See* File No. BRCDT-20121001AGN, Exh. 24.

[47] *See* WRFB Order, Consent Decree ¶¶ 14, 16, 18, 19. The WRFB Order covered a variety of other compliance issues, in addition to the children's E/I programming matter, which are not germane to the Affiliates Associations' discussion of children's E/I programming compliance under Category B.

Category A compliance that both the Media Bureau staff and the full Commission were unable to find that it was "at least equivalent" to airing three hours of core programming per week during that period of time. If WRFB's programming strategy was insufficient to meet Category B, it is difficult to imagine what type of programming strategy would meet Category B; the handling of the WRFB renewal demonstrates quite clearly that reliance by television stations on Category B for compliance is fraught with risk.

In the wake of the WRFB Order, the Affiliates Associations posit that, irrespective of whether the Commission undertakes a comprehensive review of children's programming requirements at this time,[48] it is imperative that the Commission (i) provide prompt, clear guidance on whether and under what circumstances stations might find Category B to be a viable alternative to Category A compliance, and (ii) make clear to Media Bureau staff that they possess the authority to find a station like WRFB to have met its CTA obligations under Category B without referring such a solid E/I programming performance to the full Commission. And, the Affiliates Associations urge the FCC to reinvigorate its Category B children's programming guidelines to better reflect the needs and desires of station audiences. Stations should be permitted to use a range of substantive programming options (including a more creative mix of traditional, regularly scheduled programs, short-form programs, children's specials, and PSAs) and delivery mechanisms (including multicast channels, viewer-notice-and-DVR-recording, and sponsored programming on other broadcast channels) to satisfy their CTA E/I programming obligations. This approach would encourage 21st Century innovation in serving young viewers while also

[48] To be clear, the Affiliates Associations support an examination of the framework for flexible compliance with their children's programming obligations. The FCC should work thoughtfully with broadcasters and other stakeholders to develop criteria that are both objective enough that stations can be sure they comply and flexible enough to allow stations to adopt programming strategies that fit the needs and expectations of their local audiences.

recognizing that consumer demand has increased for local news and coverage of live local, regional, national, and international sporting events.

3. The Rigid "Second Home" Policy Should Be Eliminated in Favor of Greater Flexibility

The Affiliates Associations agree with NAB that the FCC's "second home" preemption rescheduling policy unnecessarily restricts the ability of local stations—especially those who air live network sports programming and local newscasts on weekend mornings—to meet the expectations and needs of their viewers.[49] The FCC's continued focus on requiring stations to air programming at established times in the first place and to reschedule those programs to pre-set "second homes" when preemptions are necessary makes less sense in a world where a dwindling number of viewers watch broadcast programming on the station's schedule.[50] As such, the current "second home" requirements are overly restrictive, impractical, and unnecessary.

Given that "appointment viewing" is a thing of the past, particularly for younger viewers, the idea that children (or their caretakers) will make an "appointment" to watch a program at its scheduled time and then make a second "appointment" to watch that program at a pre-scheduled "second home" time bears almost no resemblance to reality. And, as a practical matter, the availability of consistent second homes is decreasing. Over the past several years, many network-affiliated stations have added and expanded weekend morning newscasts, and most national networks have increased their weekend coverage of live sporting events. These increases in weekend news and sports programming necessarily means that fewer time slots are available as consistently reliable "second homes."

[49] *See* NAB Comments at 32-36.

[50] *See* NAB Comments at 24-26.

If children's programming must be rescheduled, the key should not be that it be rescheduled to a "second home," but rather that stations give viewers sufficient notice of when the program will air. That way, they will be able to either watch the program at that time or (more likely) set their DVRs to record it. Thus, the Affiliates Associations enthusiastically support NAB's proposals to make the rescheduling of preempted children's programming more flexible, including the implementation of a longer period of time in which to reschedule and the elimination of the formalistic, restrictive "second home" policy.[51]

In addition, the Affiliates Associations urge the Commission to allow more flexibility to stations to use multicast channels for handling core programming preemptions. In fact, the Commission has already theoretically recognized, at least in part, the logic and viability of using multicast channels to improve children's E/I programming compliance flexibility. In the 2004 Order, the Commission invoked the use of multicast channels in an effort to provide television stations with ongoing relief from programming preemption situations:

> As a general matter, for digital broadcasters we will not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream. Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming.[52]

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[51] *See* NAB Comments at 35 & n.79.

[52] 2004 Order, 19 FCC Rcd at ¶ 40 (internal footnote omitted). The Commission's acknowledgement more than a decade ago that children's E/I programming on a station's multicast channel may serve fungibly with children's E/I programming on the station's primary channel—so long as adequate publicity is provided—represented great foresight. Advancement of this channel fungibility concept warrants further consideration in the more fully evolved multicast video programming world of 2017 so that stations may exercise some appropriate degree of discretion as to how best to serve the viewing needs and expectations of children and parents across

While the FCC's pronouncement was well-intentioned, the Affiliates Associations are not aware of any local television broadcast station that has actually availed itself of the multicast preemption flexibility. The "rub," as it were, is the "comparability" requirement: not only has the Commission never provided guidance as to what degree of carriage would be required to meet the comparability standard, but also the vast majority of local stations have historically been unable to secure carriage of multicast channels by DISH or DirecTV. The lack of multicast carriage by satellite providers leaves stations exposed to great uncertainty (and, therefore, regulatory risk) in relying on the existing multicast preemption flexibility. As such, this existing preemption policy does not address the preemption issues discussed herein.

C. The FCC Should Review and Reform Its Broadcast Attribution Rules.

The Affiliates Associations also agree with NAB that a comprehensive re-examination of the FCC's broadcast TV ownership attribution rules is long overdue.[53] Ownership attribution rules should be simple to understand, administer, and enforce, but the current attribution rules are convoluted and inappropriately assume indicia of control over broadcast stations, which ultimately discourages efficient investment in the television industry. The Affiliates Associations support the NAB's request that the Commission launch a proceeding to rationalize the rules.

As the FCC knows, with the post-auction repack and the upcoming implementation of ATSC 3.0, local television broadcasting is entering a critical stage in its history. Access to capital will be critical to network-affiliated stations as they strive to maintain their competitive position. Under the current rules, however, TV stations and station groups must compete for investor capital

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multiple channels of programming on a television station. In other words, the Affiliates Associations agree with NAB that additional flexibility should be given to television stations to choose which of their channels on which to air core programming. *See* NAB Comments at 36-37.

[53] *See* NAB Comments at 38-44.

against other communications industries with much more favorable, less cumbersome attribution standards. There is no justification for having an attributable interest threshold of 20% for passive institutional investors in television stations, while the standard is 40% for wireless licenses. When choosing desirable investments, entities seek as little regulatory encumbrance as possible: All things being equal, rational economic behavior dictates that they will choose the non-attributable interest over the attributable interest in every case. The FCC should ensure that TV broadcasters seeking outside investment are on a level regulatory playing field with other FCC-regulated entities.

Moreover, some of the FCC's attribution rules seem to have no justification at all. For example, the rule that presumptively attributes ownership to each uninsulated LP or LLC, regardless of its level of voting or equity interest in a TV station, warrants a fresh look. A large percentage of available capital is held in LPs and LLCs. Requiring these entities to formally insulate themselves from the operation of stations in which they are purchasing only a small, non-controlling interest can only chill investors' allocation of capital to the TV broadcast sector. The FCC should examine these and other attribution rules and retain only those that are reasonably necessary to further the goals of localism, diversity, and competition that are at the heart of the ownership limits.

NAB also rightly requests a thorough examination of the equity/debt plus rule ("EDP Rule").[54] The EDP Rule is a complex and difficult-to-apply solution to a problem that the FCC has never really identified. While the justification for the EDP Rule remains elusive, the FCC has found that the rule discourages investment and access to capital for TV broadcasters, particularly

[54] *See* NAB Comments at 39-40; *see also* 47 C.F.R. § 73.3555 (Note 2.i).

small, minority-, and female- owned stations.[55] This rule is exactly the type of regulation that the FCC should be addressing as a result of this proceeding. The FCC should look closely at the EDP Rule and consider repealing or radically simplifying it to ensure that it ceases to be a barrier to investment in the television industry.

IV. CONCLUSION

For the foregoing reasons, the Affiliates Associations request that the FCC (i) leave the Network Representation Rule in place, without revision and (ii) adopt the changes identified above, or, to the extent necessary, launch proceedings to consider such regulatory modifications.

Respectfully submitted,

ABC TELEVISION AFFILIATES ASSOCIATION,
CBS TELEVISION NETWORK AFFILIATES ASSOCIATION
FBC TELEVISION AFFILIATES ASSOCIATION

/s/
Mark J. Prak
Stephen Hartzell
BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, L.L.P.
Wells Fargo Capitol Center, Suite 1700
150 Fayetteville Street
Raleigh, N.C. 27601
Telephone: (919) 839-0300

Counsel for the ABC Television Affiliates Association

/s/
John Feore
Jason Rademacher
COOLEY LLP
1299 Pennsylvania Avenue, N.W.
Suite 700
Washington, D.C. 20004
Telephone: (202) 842-7800

Counsel for the CBS Television Network Affiliates Association and the FBC Television Affiliates Association

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[55] *See* NAB Comments at 39 (citing *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272 ¶ 8 (2016)).